

**MEMO ENDORSED**

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 5/23/2023

Partners
Dawn M. Cardi
Chad L. Edgar

Associates
Jessica Friedrich
Joanna C. Kahan

Of counsel
Diane Ferrone

May 23, 2023

VIA ECF

Hon. Valeric E. Caproni
United States District Judge
Southern District of New York
United States Courthouse
40 Foley Square
New York, NY 10007

Re: *United States v. Falikou Kone*, 19 Cr. 808 (VEC)

Dear Judge Caproni:

I represent the defendant Falikou Kone in the above-referenced action. I write respectfully to request that, pursuant to Rule 38(b)(2) of the Federal Rules of Criminal Procedure, the Court recommend to the Bureau of Prison that Mr. Kone be designated to a facility closer in proximity to New York City in order to assist counsel in preparation of his appeal.

At sentencing and as reflected in Mr. Kone's Judgment of Conviction, the Court recommended that the defendant be designated "in a facility close to the New York Metropolitan Area to facilitate family visits." Ultimately, Mr. Kone was designated to Loretto, Federal Correctional Institute located in Cresson, Pennsylvania, which is over five hours away from New York City by car. Given the distance between Loretto, FCI and New York, it will be virtually impossible for Mr. Kone's family to visit him in any sort of routine way. Not only do they lack the funds to visit him, one of Mr. Kone's children has mental-health issues, outlined in sentencing submissions to the Court, that makes such a journey impossible.

Rule 38 of the Federal Rules of Criminal Procedure provides in relevant part as follows: "If the defendant is not released pending appeal, the court may recommend to the Attorney General that the defendant be confined near the place of the trial or appeal for a period reasonably necessary to permit the defendant to assist in preparing the appeal." Mr. Kone's assistance in preparing his appeal is necessary. I am confronted with a voluminous record generated by predecessor counsel who prepared and tried the case that I inherited at the

Hon. Valerie E. Caproni
United States District Judge
May 23, 2023
p. 2

sentencing stage. To expedite the identification of issues and full briefing of them, I need Mr. Kone's assistance, for he is intimately familiar with the record. The Court is well aware of the intense manner in which Mr. Kone has participated in his own representation. His review of the record, alongside my own will prove invaluable. The physical distance between Mr. Kone and me will substantially impair our ability to collaborate in the preparation for his appeal, as it would limit the number of in-person visits that could occur. In addition, telephone conference calls are poor substitutes for in-person visits. Further, it is my experience that legal calls are extremely difficult to schedule with clients who have been convicted, designated and transported to their facility for the purpose of discussing appeals. The process of scheduling such calls can take weeks and frequently are unilaterally canceled or rescheduled without consulting with counsel.

As the Court knows, Mr. Kone is an extremely engaged and active participant in all aspects of his representation. He ardently wishes to play a significant role in the preparation of his appeal. I also believe that his contribution will be significant and material to a successful appeal of his conviction.

In light of the foregoing, I respectfully request that the Court recommend to the Bureau of Prison that, pursuant to Rule 38(b)(2), Mr. Kone be re-designated to a facility closer to the New York City area, such as the Metropolitan Detention Center in Brooklyn, the Federal Correctional Institution in Otisville or the Federal Correctional Institution in Danbury, CT.

We thank the Court in advance for its consideration of this matter.

Respectfully submitted,

/s/

Dawn M. Cardi

cc: All Counsel (by ECF)

Application GRANTED. The Court respectfully requests the Bureau of Prisons to re-designate Mr. Kone to a facility within the New York metropolitan area.

SO ORDERED.



Date: 5/23/2023

HON. VALERIE CAPRONI
UNITED STATES DISTRICT JUDGE